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SALMAH OMAR & ORS

v.

AHMAD ROSLI AZIZ (PENTADBIR HARTA PESAKA OSMAN MOHAMED, SI MATI) & ANOR

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HIGH COURT MALAYA, PULAU PINANG
ZAKARIA SAM J
[CIVIL SUIT NO: 22-318-1998]
15 AUGUST 2011

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LAND LAW: *Ownership - Title to land - Doctrine of right of survivorship - Whether applicable to Muslim inhabitants of Straits Settlement - Whether Muslim's wealth to be distributed according to Faraid laws - Civil Law Act 1956, proviso to s. 3*

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Osman bin Mohamed (Osman) and his brother, Omar bin Mohamed (Omar) acquired a piece of land back in 1954. However, both died intestate, Omar leaving his children (the plaintiffs in the present suit) and wife as beneficiaries, under Islamic law and Osman leaving his siblings and wife as his beneficiaries, under Islamic law. In 1974, the Director of Land Titles Penang entered Osman's name as the sole owner of the land in the Interim Register. Subsequently, the first defendant held the land as administrator until it was sold to Zantalite Enterprise for a consideration of RM3,583,946.08. Upon the institution of the suit by the plaintiffs, the court ordered the balance consideration for the land be held by the lawyers as stakeholders until the final disposal of the suit. The plaintiffs sought a declaration, *inter alia*, that the entry in the folio of the Interim Register showing Osman as the registered owner of the land was null and void, a declaration that Omar and Osman were the registered owners of the land and rectification to register both Osman and Omar as joint owners with equal shares. The defendants contended that: (i) the principle of joint tenancy is embodied in various Ordinances and the National Land Code (Penang and Malacca Titles) Act 1963 and therefore is the authority for joint tenancy and not the common law; (ii) statute law overrides Islamic law; and (iii) joint tenancy is not in conflict with Islamic law. In the instant case, the court had to decide under O. 14 of the Rules of the High Court 1980 on the issue of law whether the doctrine of right of survivorship under the English common law for property held under joint tenancy applied in this case.

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Held (allowing the plaintiffs' claim with costs to be taxed):

(1) The conveyance was drawn up by a lawyer trained in English law. Nothing on the face of the document indicated that the effect of joint tenancy was explained to Omar and Osman. There was no evidence that both of them could read or understand English. Neither was there evidence that the said documents were explained to them in Bahasa Malaysia, the language they both understood. (para 14)

(2) English principles, which were given statutory force in the proviso to s. 3 of the Civil Law Act 1956, were not used when they would not be applicable to the local inhabitants and would cause unfairness and injustice. (*Khoo Hooi Leong v. Khoo Chong Yeok*; refd) (paras 17 & 18)

(3) In light of the principle, the doctrine of right of survivorship cannot be applied to Muslim inhabitants in the Straits Settlement where their personal law does not allow for creation of ownership limited in time. Omar and Osman would not have had the legal capacity to impose such a condition limiting ownership on an uncertain event. (para 19)

(4) In Syariah, a Muslim's wealth, upon his demise, should be distributed among the heirs according to the Faraid laws. It is obligatory for every Muslim to follow the laws of inheritance or will. Even to give all the leftover wealth to the particular heir without the proper and full consent of all the remaining heir is not permitted. Therefore, since Omar had signed the conveyance, he had bequeathed one third of his property to Osman. In the circumstances, two third of his shares in the land was ordered to be returned to Omar's heirs according to Faraid. (paras 40 & 41)

Case(s) referred to:

Azizunissa Abdurrahman Kadri v. Jamila Abdul Hussein Sheikh (deceased by her LRs) & Ors [2007] NOC 2238 (Bom)/2007 (4) Bom LR 769 ***(refd)***

Haji Taib v. Ismail [1971] 1 LNS 37 HC ***(refd)***

Khoo Hooi Leong v. Khoo Chong Yeok [1930] AC 346 ***(refd)***

Leonard v. Nachiappa Chetty [1923] 4 FMSLR 265 ***(refd)***

Malayan Banking Bhd v. Ya'kup Oje & Anor [2007] 5 CLJ 311 HC ***(refd)***

Sardar Nawazish Ali Khan v. Sardar Ali Raza Khan [1948] Indian Appeal's LR Vol. LXXV 62 ***(refd)***

Shafeeg Salim Talib and Another v. Fatimah Abud Talib and Others [2010] SGCA 11 ***(dist)***

A *Mahomed Jusab Abdulla v. Fatamabai Jusab Abdulla AIR (35) 1948 Bombay 53* ***(refd)***
Tan Chew Hoe Neo v. Chee Swee Cheng and Ors [1926] SSLR 60 ***(refd)***
TM Feroze Khan & Ors v. Meera Hussain TM Mohamed Mydin [2006] 3 CLJ 616 CA ***(dist)***
B *Yeap Cheah Neo and Others v. Ong Cheng Neo and Others [1875] LR6 PC 381* ***(refd)***

Legislation referred to:
Civil Law Act 1956, ss. 3, 6
Rules of the High Court 1980, O. 14A

C **Other source(s) referred to:**
Faiz Badruddin Tyabji, *Muslim Law, The Personal Law of Muslims In India And Pakistan,* 1968, 4th edn, pp 448-450
Joint Tenancy with the Right of Survivorship and Syariah: A Brief Discussion by the Islamic Banking and Finance Institute Malaysia's, The 4E Journal
D January 2006, pp 47, 48
Judith Sihombing's National Land Code A Commentary, p 3
M Hidayatullah, *Mulla Principles of Mahomedan Law,* 19th edn, 1990, p 26
Megarry and Wade, *The Law of Real Property,* 5th edn, 1984, p 419

E *For the plaintiff - Fathima Mohd Idris; M/s Idris & Assocs*
For the 1st defendant - Ajmer Singh Sandhu (Joshua Narendran with him); M/s Ajmer, Sandhu & Ong
For the 2nd defendant - Mohd Ilmani Ahmad SFC

F *Reported by S Barathi*

JUDGMENT

G **Zakaria Sam J:**

The Claim

[1] Plaintiff took out this suit for the following prayers:

H (a) A declaration that the entry in the folio of the Interim Register showing that Osman bin Mohamed as the registered owner of the land contained in Geran Mukim 1168 and known as Lot 7576, Mukim 12, Daerah Barat Daya, Permatang Damar Laut Pulau Pinang (the said land) is null
I and void.

(b) A declaration that Omar bin Mohamed and Osman bin Mohamed are the registered owners of the said land.

(c) To rectify the Registrar to register Osman bin Mohamed (deceased) and Omar bin Mohamed (deceased) as joint owners with equal shares in the said land and to cancel the entries of Zauyah binti Mohamed and Ahmad Rosli bin Aziz as Administrators pursuant to Presentation No. 204A/98 Vol. 2 Vol. 60 in the Penang Land Office records in respect of the said land.

Agreed Facts

[2] Parties have agreed to the following facts:

i. By an Indenture dated 23 April 1954 Osman bin Mohamed ("Osman") and his elder brother Omar bin Mohamed ("Omar") in consideration of the sum of RM1,700 paid to the vendors acquired all the land known as Lot: 167 (2) Mukim 12, Daerah Barat Daya, Pulau Pinang comprised in Geran No: 2416.

ii. The replacement title for the said land is Lot No. 7576, Mukim 12 Permatang Damar Laut, Daerah Barat Daya, Pulau Pinang comprised in Geran Mukim No. G.M. 1168.

iii. Both Osman and Omar were Malay Muslims of the Shafi'e mazhab.

iv. Omar died intestate aged 51 years on 1 March 1960 leaving behind seven children who are the plaintiffs, and a wife as beneficiaries to his estate under Islamic Law. At the time of his death the plaintiffs were aged 21, 19, 14, 11, 9, 7, and six years old respectively.

v. Osman died intestate aged 45 years on 22 February 1962 leaving behind his siblings and a wife as his beneficiaries under Islamic Law namely Bakar bin Mohamed, Nah binti Mohamed, Aishah binti Mohamed Sun binti Mohamed, Itam binti Mohamed, Siti Zauyah binti Mohamed, Che Yah binti Mohamed and Siti Rokiah binti Mohamed.

vi. Osman and his wife did not have any children.

vii. In around 1974 the director of Land titles Penang entered Osman's name as the sole owner of the said land in the Interim Register.

viii. On 14 February 1976 Letters of Administration to the Estate of Osman was given to Zauyah binti Mohamed and the said land was transferred to her name as Administrator on 10 February 1977.

ix. After Siti Zauyah binti Mohamed's death, Letters of Administration was granted to the 1st defendant and he held the said land as the Administrator.

x. By a sale and purchase agreement dated 24 December 1996, the 1st defendant as the Administrator sold the said land to Zantalite Enterprise (M) Sdn Bhd for a consideration of RM3,583,946.08.

xi. On 9 June 1997 and 30 May 1998 the 6th and 7th plaintiff had filed private caveats against the said land. On 27 May 1998 the plaintiffs instituted this suit.

xii. On 19 January 2000 this High Court ordered that the balance consideration for Lot 7575 Geran Mukim No. 1168 for the sum of RM3,225,551.47 is to be kept by Messrs. Ajmer Singh Sandhu & Ong as stakeholders until the final disposal of this suit.

Agreed Issue

[3] Parties have agreed for the court to decide under O. 14A of the Rules of the High Court 1980 on the following issue of law:

> Whether the doctrine of right of survivorship under English common law for property held under joint tenancy applies in this case.

Plaintiff's Submission

[4] The plaintiffs' submissions are as follows:

i. Joint tenancy is not recognised in Islamic Law since ownership is heritable and unrestricted in point of time.

ii. English Common Law was introduced with the proviso that it would only be applicable as long as it does not bring about injustice or oppression.

iii. Equity *vis* joint tenancy as odious and will find ways to treat it as a tenancy in common.

Defendant's Submission

[5] The defendant's submissions are as follows:

i. The principle of joint tenancy is embodied in various Ordinances and the National Land Code (Penang and Malacca Titles) Act 1963 and hence that is the authority for joint tenancy and not the Common Law.

ii. Statute Law overrides Islamic Law and they rely on the case of *Shafeeg bin Salim Talib and Another v. Fatimah bte Abud Talib and Others* [2010] SGCA 11.

iii. Joint tenancy is not in conflict with Islamic law.

What Is Joint Tenancy

[6] Joint tenancy is a form of vesting title to property owned by two or more persons, in equal interest, subject to the right of survivorship in the surviving joint tenant(s). Title must have been acquired at the same time, by the same conveyance, and the document must expressly declare the intention to create joint tenancy estate.

[7] The right of survivorship means that when one of the co-owners dies, the surviving co-owner automatically becomes the owner of the asset regardless of the terms of the deceased party's will. This implies that with the right of survivorship, any property owned by the deceased will be passed to the survivor by virtue of the way the property is owned and not under the terms of a will.

Equity And Joint Tenancy

[8] Equity disapproves joint tenancy as equity is more concerned to achieve fairness. Megarry and Wade in their book *The Law of Real Property* (5th edn. 1984) explains at p. 419. 'The right of survivorship of a joint tenancy is often unsuitable for beneficial owners because it introduces an element of chance'. Equity sought to avoid 'the gamble of the tontine' that comes with the doctrine of survivorship.

[9] In the case of *Tan Chew Hoe Neo v. Chee Swee Cheng and Others* [1926] SSLR 60 at p. 97 Reay J, explained how equity viewed joint tenancy:

A I cannot refrain from some comment, however short and inadequate, on the drawbacks of the English Common Law rule regarding joint tenancies. This has its roots in the feudal system of land tenure, and the Courts of Equity have from very early days in case after case attempted to relieve unfortunate sufferers from its unfair results. 'A joint tenancy', said Lord Cowper, 'is a thing odious in "Equity", and if it is odious in England, what term is to be applied to it here in dealing with Asiatics? A solicitor in this country who advises or assists a client to become a joint tenant, except as bare trustee, is accepting a very grave responsibility.'

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Islamic Law On Joint Tenancy And The Right Of Survivorship

[10] There is no joint tenancy in Islamic Law, which considers ownership as a group of rights which by its definition is heritable and unrestricted in point of time. The notion of limited duration cannot be attached to ownership. Under Islamic Law, the owner of property cannot limit his ownership to the duration of his life. Such a condition would be void, and the property would go to his heirs upon his death – see *Muslim Law, The Personal Law of Muslims In India And Pakistan* by Faiz Badruddin Tyabji, 1968 in 4th edn, at pp. 448-450.

[11] On the question of restricting ownership by reference to time, the Privy Council in *Sardar Nawazish Ali Khan v. Sardar Ali Raza Khan* [1948] Indian Appeal's LR Vol. LXXV 62 at p. 77 explained:

> In general, Muslim Law draws no distinction between real and personal property, and their Lordships know of no authoritative work on Muslim law … and no decision of this Board which affirms that Muslim law recognizes the splitting up of ownership of land into estates, distinguished in point of quality like legal and equitable estates, or in point of duration like estate in fee simple, in tail, for life, or in remainder. What Muslim law does recognize and insist on, is the distinction between the corpus of property itself (ayn) and the usufruct in the property (manafi). Over the corpus of property the law recognizes only absolute dominion, heritable, and unrestricted in point of time; and where a gift of the corpus seeks to impose a condition inconsistent with such absolute dominion the condition is rejected as repugnant; but interests limited in point of time can be created in the usufruct of the property, and the dominion over the corpus takes effect subject to any such limited interests.

[12] According to *Mulla Principles of Mahomedan Law* by M. Hidayatullah (19th edn. 1990) at p. 26. A

> There is no joint tenancy in Mahomedan law and the heirs are only tenants-in-common.

Application Of Law To The Facts Here B

[13] In this case the conveyance was executed by Omar and Osman, two Muslim brothers. They are bound by the teachings of the Quran and Hadith. In Islam ownership cannot be uncertain, limited in point of time and not heritable. A Muslim C does not have the legal capacity to impose condition limiting ownership on an uncertain event, this is a violation of Quranic injunction and the Hadith.

[14] The conveyance was drawn up by a lawyer trained in D English law. Nothing on the face of the document indicates that the effect of joint tenancy was explained to Omar and Osman. There was no evidence that both of them could read or understand English. Neither was there evidence that the said documents were explained to them in Bahasa Malaysia, the E language they both understand.

[15] Once again I turn to Reay JC who has taken pains in reminding practitioners on the need to understand local conditions when applying English law. In *Leonard v. Nachiappa Chetty* [1923] 4 FMSLR 265 at pp. 267-268 the learned judge said: F

> Counsel for the plaintiff relied chiefly on the English law. Counsel for the defendant not only argued entirely on English law, but stated that he did not know what the local procedure was. This places me in a difficult position. A whole chapter of the Civil G Procedure Code is devoted to the subject … and that is the law which I am bound to apply. Before reliance can be placed on English decisions, particularly decisions on points of procedure, it is necessary in the first instance to examine carefully our local law and to ascertain what it is and in what respect it resembles or differs from the English law. This seems a self-evident H proposition, but it is nevertheless too often overlooked by counsel.

Reception Of English Law

[16] Principles of common law and equity were formally introduced in Penang by the First Charter of Justice in 1807 with I the proviso that 'as far as local circumstances will admit'. The

British did not apply English Law in this country without modification, they stressed 'the need to respect the customary law of the non-British Asian inhabitants who professing different religions, and using and having different religions and using and having different manners, habits, customs, and persuasion, had settled there' – see *Judith Sihombing's National Land Code A Commentary* at p. 3. See also *Yeap Cheah Neo and Others v. Ong Cheng Neo and Others* [1875] LR6 PC 381 at p. 392.

[17] English principles were not used when they would not be applicable to the local inhabitants and would cause unfairness and injustice. As observed by Lord Russell of Killowen in *Khoo Hooi Leong v. Khoo Chong Yeok* [1930] AC 346 at p. 355, that:

> The modifications of the law of England which obtain in the Colony in the application of that law to the various alien races established there, arise from the necessity of preventing the injustice or oppression which would ensue if that law were applied to alien races unmodified. That was the view expressed by Sir Peter Maxwell CJ in *Choa Choon Neo v. Spottiswoode*; and this Board in *Yeap Cheah Neo v. Ong Cheng Neo*, stated that in Sir Peter Maxwell's judgment. "The rules of English law and the degree in which, in cases of this kind, regard should be had to the habits and usages of the various people residing in the colony are correctly stated".

[18] This principle was given statutory force in the proviso to s. 3 of the Civil Law Act 1956 which provides that:

> The said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualification as local circumstances render necessary.

[19] In the light of this, I am persuaded to hold that the doctrine of right of survivorship cannot be applied to Muslim inhabitants in the Straits Settlement where their personal law does not allow for creation of ownership limited in time. Omar and Osman would not have had the legal capacity to impose such a condition limiting ownership on an uncertain event.

[20] It would have been very unfair that the issues of Omar as his Quranic heirs be deprived of their legitimate right to his share of the property all because of the alien practice of joint tenancy.

[21] My attention is also drawn to the proviso to s. 6 of the Civil Law Ordinance No IV of 1878 and s. 6 of the Civil Law Ordinance No VIII of 1909 applicable in the Straits Settlement which reads:

> Provided that nothing herein contained shall be taken to introduce into this Colony any part of the law of England relating to the tenure or conveyance, or assurance of, or succession to, any land or other immoveable property, or any estate, right or interest thereon.

[22] This same proviso is now found in s. 6 of the Civil Law Act 1956. In *Haji Taib v. Ismail* [1971] 2 MLJ 36, Syed Agil Barakbah J (as he then was) expressed that (at p. 38):

> The provision of s. 6 clearly prohibits the introduction into the Federation or any States comprised therein of any part of the law of England relating to tenure. Tenure means the mode of holding or occupying land or the manner of possession.

[23] This to me, clearly indicates that the principle of right of survivorship would only be applied over here with modifications as are necessary to prevent it from operating unjustly and oppressively.

Defendant's Contention

[24] The 1st defendant contends that the principle of right of survivorship has statutory force and is not based on common law and that statute will override Islamic law.

[25] But it has to be pointed out that parties have agreed that the point for determination in this case is 'whether the doctrine of right of survivorship under English common law for property held under joint tenancy applies in this case', and that is what I have to decide upon.

[26] The 1st defendant has named various Ordinances that is, the Boundaries Ordinance 1884, the Crown Lands Ordinance No II 1886, the Conveyancing Ordinance No IV of 1886, the Registration of Deeds Ordinance No XIII of 1886, Conveyancing and Law of Property Ordinance 1886 and the National Land Code (Penang and Malacca Titles) Act 1963 (which is also being relied by the 2nd defendant).

[27] However all these Ordinances and the Act they have quoted dealt with registration of deeds, conveyancing, survey etc they did not codify the law on joint tenancy.

[28] This was not the case in *Shafeeg*'s case *(supra)* relied upon by the 1st defendant.

[29] In *Shafeeg*'s case the conveyance was registered under the Land Titles Act 1994 of Singapore, which incorporated the English doctrine of survivorship. It provides for change of ownership when one tenant predeceases the other. There is no such equivalent in our statutory law for this.

[30] The 1st defendant have also referred to the case of *TM Feroze Khan & Ors v. Meera Hussain TM Mohamed Mydin* [2006] 3 CLJ 616. However this case can be distinguished from the present case. In *TM Feroze Khan* the National Land Code had provisions on trust whereas the case at hand is about joint tenancy which is not recognised under the Land Code except in the case of trustees.

[31] One has to bear in mind that in the case of *TM Feroze* the Court of Appeal had found that there was properly constituted hibah there.

[32] Now, the 1st defendant have referred to two Indian cases, ie, *Mahomed Jusab Abdulla v. Fatamabai Jusab Abdulla* AIR (35) 1948 Bombay 53 and *Azizunissa Abdurrahman Kadri v. Jamila Abdul Hussein Sheikh (deceased by her LRs) & Ors* [2007] NOC 2238 (Bom)/2007 (4) Bom LR 769 to support their contention that joint tenancy is not in conflict with Islamic law.

[33] *Mahomed Jusab* was followed in *Azizunissa*'s case. In *Mahomed Jusab*'s case the court had rhetorically asked 'Is there anything in Mahomedan law which is repugnant to the creation of a grant of joint tenancy if the parties so desire it?' The court then answered saying it could find nothing repugnant but had failed to consider the gharar (uncertainty) element in joint tenancy. The court failed to consider the element of chance in joint tenancy where it is a gamble as to which owner predeceases the other's before the final survivor becomes the sole owner. This is the basis of gambling and it is prohibited in Islam. The court also failed to consider that the Syariah only recognise absolute dominion over

corpus of the property, heritable, and unrestricted in point of time. This would be contrary to joint tenancy since the dominion is of limited duration and a person cannot will his right to the property under a will.

[34] As explained by Hamid Sultan Abu Backer JC, in *Malayan Banking Bhd v. Ya'kup Oje & Anor* [2007] 5 CLJ 311 at p. 325:

> Islamic law of commercial transaction fundamentally is rooted on the premise of total eradication of riba and gharar (uncertainty).

[35] This aspect of Islamic law was not considered in *Jusab*'s case.

[36] The prohibition against joint tenancy is also clearly explained in the article *Joint Tenancy with the Right of Survivorship and Syariah: A Brief Discussion by the Islamic Banking and Finance Institute Malaysia's*, The 4E Journal January 2006 (at pp. 47 and 48) where it was explained as follows:

> 'The joint tenancy is the concept of joint ownership of uncertainty itself since the fundamental nature of the ownership of joint tenants' property is communal ownership. Each joint tenant has an interest in the whole but does not enjoy an exclusive right to any part thereof. In other words, the interest of joint tenants is unspecified. This is the strongest reason for its prohibition, since as what was elaborated before, the essence of joint tenancy is unity of ownership.
>
> From the aforementioned feature of joint tenancy, it is clear that the main criterion for condemnation of the contract of joint tenancy under syariah is the involvement of gharar. The occurrence of gharar in the contract of joint tenancy is due to the Jahalah element. From fiqh perspective, the word jahalah is used to connote lack of knowledge. This implies that contracting under conditions of uncertainty is not permissible.
>
> The contract of conventional joint tenancy involves the jahalah element in the sense that no such tenant can claim that he or she has a definite portion of share,say one-third or one-fourth in the asset. There is no clear indication in the agreement of who owns how much of the property …
>
> Another concern with the concept of joint tenancy from the syariah point of view is the issue of the survivorship principle. Based on the current practice (which is based on common law), in the event of death of one joint tenant, the whole property will immediately be vested to the surviving tenants …

A In joint tenancy, according to the rules of inheritance, the estate and wealth of the deceased will be distributed amongst the heirs, whereas in syariah, a Muslim's wealth, upon deceased, should be distributed among the heirs according to the laws of Allah S.W.T. It is obligatory for every Muslim to follow the laws of mirath (inheritance) or wasiyyah (will). To give all the leftover wealth to the particular surviving heirs without the proper and full consent of all the remaining heirs is not permitted.

The same applies to case of wassiyyah, it is allowed if one wishes to make a wasiyyah for a non-relative, or charity, but only up to one-third of one's total wealth. The remaining two-third is to be distributed amongst the heirs according to the fixed portion as prescribed by Allah S.W.T. If one does not make a bequest, then all of the estate will be divided among the surviving heirs. As it readily apparent from a brief discussion of the syariah standpoints towards the conventional joint tenancy with the right of survivorship described above, the current practice of joint ownership does not lend itself well to Islamic principles.

[37] There is an also element of chance in joint tenancy where it is a gamble as to which owner predecease the others before the final survivor becomes the sole owner. This is the basis of gambling and it is prohibited in Islam.

[38] As acknowledged in *Sardar Nawazish*'s case *(supra)* at p. 50, the Prophet was not in favour of unlimited testamentary power. In our case, the predicament of Omar's children is best reflected by the advice of the Prophet to his follower: 'You may leave a third of your property by a will but third part, to be disposed of by will, is a great portion; and it is better you should leave your heirs rich than in a state of poverty, which might oblige them to beg of others'. According to another of his sayings: 'God has allotted to every heir his particular right'.

[39] The decision in *Sardar Nawazish*'s case was given by the Privy Council where the confusion about the principle of ownership of property was clarified whereby it recognised that 'Muslim law admits only ownership unlimited in duration, but recognises interests of limited duration in the use of property'. Unfortunately this authority was not referred to in *Jusab*'s case and I find it of no persuasive value.

[40] In Syariah, a Muslim's wealth, upon his demise, should be distributed among the heirs according to the laws of Allah SWT ie, the Faraid. It is obligatory for every Muslim to follow the laws of inheritance or will. Even to give all the leftover wealth to the particular heir without the proper and full consent of all the remaining heirs is not permitted.

Conclusion

[41] Be that as it may, since Omar had signed the conveyance, I take it that Omar had bequested one third of his property to Osman. For that reason I ordered two third of his shares in the land to be returned to Omar's heirs according to Faraid.

[42] For the above reasons I allowed the plaintiffs' claim accordingly with costs to be taxed unless agreed.